

# Virginia Opioid Abatement Authority

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Presented to the  
Virginia Association of Community Service Boards  
September 30, 2022

- Litigation against prescription opioid manufacturers and all the organizations in their supply/distribution chain
  - ✓ What started in 2016/2017 as a collection of cases from the Appalachian region grew to 3,000+ cases involving state courts and federal courts.
  - ✓ In late 2017 a federal judicial panel consolidated all opioid related litigation into single multi-district litigation (MDL). The resulting civil process has been described as the most complex tort case in US history

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- Parties that have reached settlement after 3 years of negotiation and legal maneuvering include:
  - ✓ Defendants:
    - The three largest distributors (McKesson, Cardinal Health and AmerisourceBergen)
    - Manufacturer Johnson and Johnson (Janssen Pharmaceuticals)
  - ✓ Plaintiffs:
    - Group of states attorneys general
    - Plaintiff's executive committee and negotiation committee comprised of lawyers from the MDL (representing subdivisions)
  - ✓ Judge Dan Polster (appointed to oversee the MDL litigation)
  - ✓ Special masters appointed by the MDL court



# More about the Distributors and Janssen Settlements

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- Distributors will pay a maximum of \$21 billion over 18 years
- J&J / Janssen will pay a maximum of \$5 billion over ten years
- Approximately \$22.8 billion in settlement proceeds payable to state and local subdivisions.
- Of the funds going directly to participating states and subdivisions, at least 85% must be used for abatement of the Opioid Epidemic, with the overwhelming bulk of the proceeds restricted to funding future abatement efforts by state and local governments.

# More about the Distributors and Janssen Settlements (cont'd)

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- The settlements will allow for a broad range of approved abatement uses by state and local governments.
- Developed in consultation with the nation's leading public health experts, the list of pre-approved uses includes a wide range of intervention, treatment, education, and recovery services so that state and local governments can decide what will best serve their communities.
- It is anticipated that entire communities will benefit from the effects of the opioid-remediation efforts funded by the settlements and the injunctive relief the settlements provide.



## More about the Distributors and Janssen Settlements (cont'd)

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- Less than 10% of the settlement proceeds will be earmarked to compensate private lawyers who have been litigating cases on behalf of state and local governments for several years and have incurred substantial out of pocket costs.
- Compensation will occur through an application procedure overseen by court-appointed arbiters.
- An “additional restitution” sum is provided to settling states that did not hire outside counsel (ie, Virginia), to use towards furthering the abatement goal and to defray their investigation and litigation costs.

# Virginia's Participation in these Settlements

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- Incentives offered for all litigating public bodies to join the master settlement and to release their separate claims against defendants
- In Virginia, only the state and its direct subdivisions (cities and counties) can participate in these settlements.
- In late 2021-early 2022, the OAG worked with local attorneys and outside counsel representing localities, and with numerous associations, to encourage localities to participate
  - ✓ Achieved 100% participation by the 133 cities and counties
  - ✓ Resulted in a signed MOU between the localities and the Commonwealth
  - ✓ The MOU is incorporated by reference into the settlement agreement



# Key Elements in Virginia

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- Settlement Agreements with the defendants (court order)
- Virginia's Settlement Allocation Memorandum of Understanding
- *Code of Virginia* and in particular *Title 2.2, Chapter 22, Article 12*

***Should a difference exist between these guiding documents  
the Settlement Agreement / Court Order(s) generally will control***

# *Code of Virginia*, Title 2.2, Chapter 22, Article 12

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Established by the General Assembly in 2021

*Created the Opioid Abatement Authority as an independent body whose purpose is to abate and remediate the opioid epidemic in the Commonwealth through financial support from the Fund, in the form of grants, donations, or other assistance, for efforts to treat, prevent, and reduce opioid use disorder and the misuse of opioids in the Commonwealth.*



# Duties of the OAA

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1. Establish specific criteria and procedures for awards from the Fund;
2. Establish requirements for the submission of funding requests;
3. Evaluate funding requests in accordance with the criteria established by the Authority and the provisions of this article;
4. Make awards from the Fund in a manner that distributes funds equitably among all community services board regions of the Commonwealth, including the establishment of mandatory minimum percentages of funds to be awarded from the Commonwealth to each participating locality;
5. Evaluate the implementation and results of all efforts receiving support from the Authority; and
6. Administer the Fund in accordance with the provisions of the *Code of Virginia*.

# Who Can Receive Distributions from the OAA?

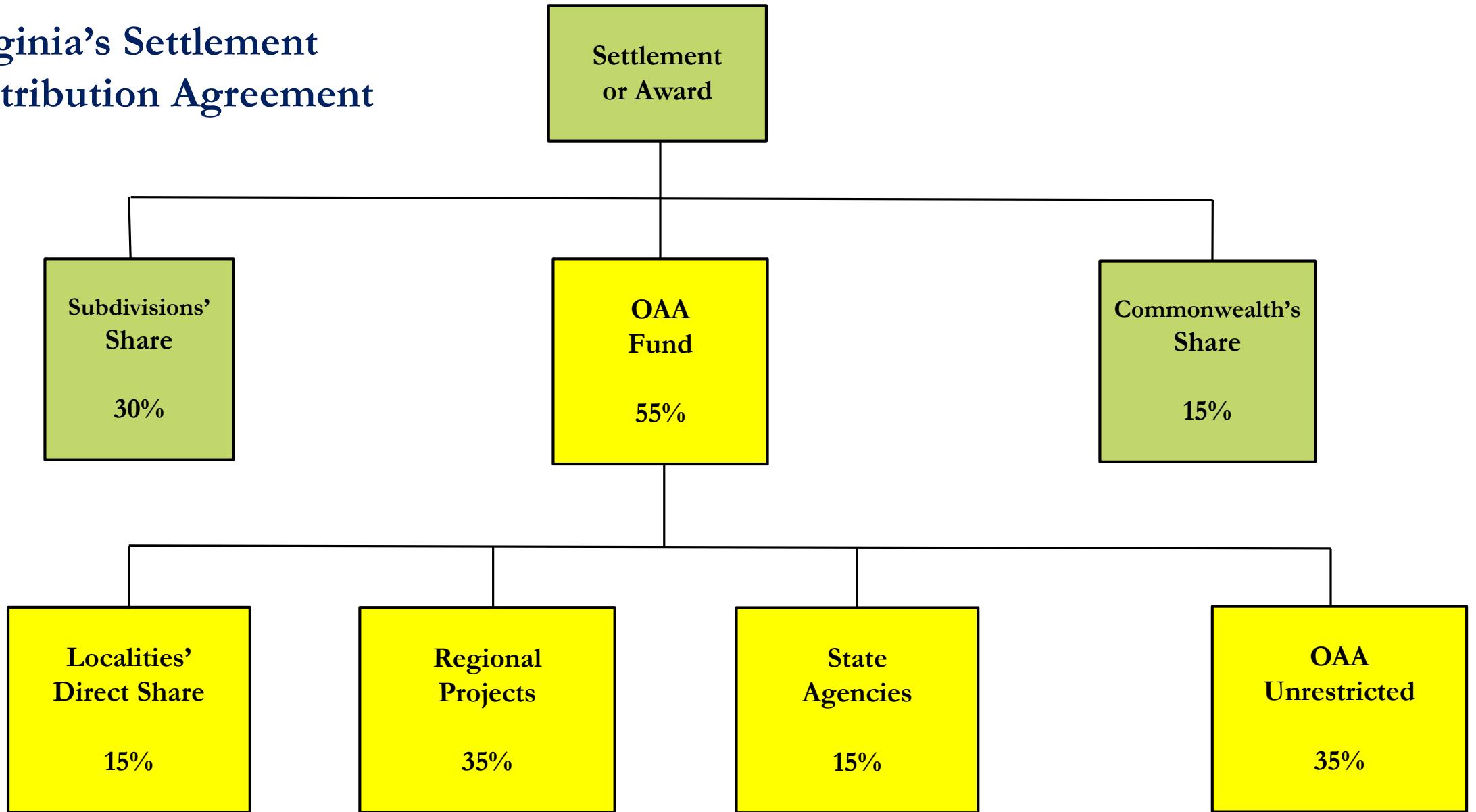
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- Only organizations that are parties to the legal action can receive distributions/grants
  - ✓ Participating Subdivisions - **Cities and Counties** that have signed the Virginia Settlement Memorandum of Understanding
  - ✓ **State Agencies** – as defined in the *Code of Virginia*

*Cities, Counties, and State Agencies can partner with various organizations to provide services but they must adhere to procurement laws and must oversee the work*

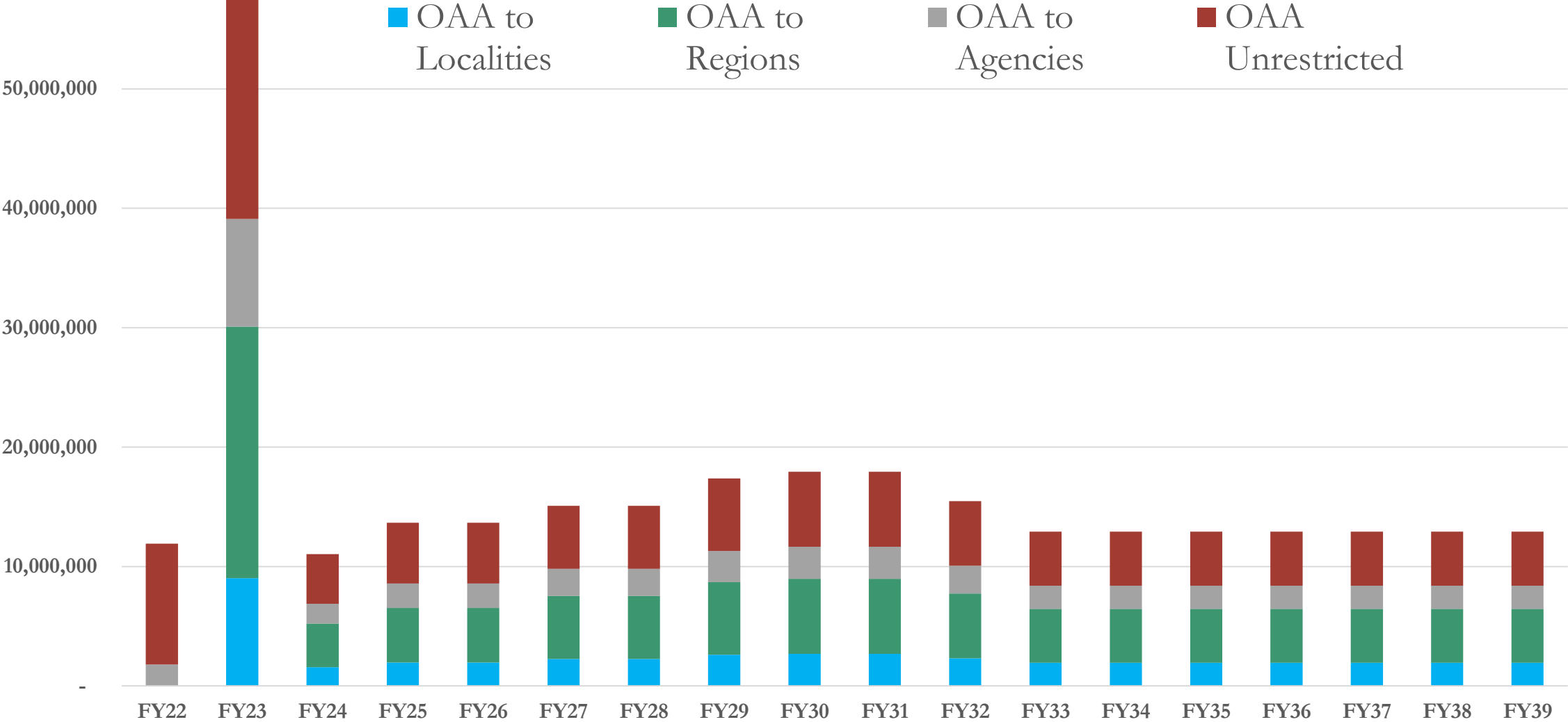


# Virginia's Settlement Distribution Agreement



# Estimated OAA Settlement Distributions

## for Fiscal Years 2021 through 2039





# How can OAA funds be used?

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1. To treat, prevent, or reduce opioid use disorder or the misuse of opioids or otherwise abate or remediate the opioid epidemic;
2. Conducted or managed by any agency of the Commonwealth or participating locality;
3. Shall NOT be used by the recipient to supplant funding for an existing program or continue funding an existing program at its current amount of funding;
4. No indirect costs allowed;
5. Recipients shall provide the OAA information regarding the implementation of the effort and allow monitoring and review of the effort.

*“ . . . otherwise abate or remediate the opioid epidemic.”*

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Treatment	Prevent overprescribing
Recovery	Education
Criminal Justice considerations	Prevention
Drug Courts	Reduce overdoses
Pregnancy	Detox

*“ . . . through evidence-based or evidence-informed methods, programs, or strategies”*



# Higher Priority Will be Given to:

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1. Programs or organizations with established record of success
2. Programs in communities with a high incidence of opioid use disorder or opioid death rate, relative to population
3. Programs in a historically economically disadvantaged communities
4. Include a monetary match from or on behalf of the applicant, with higher priority given to an effort with a larger matching amount.

# OAA Annual Distributions to Localities

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1. OAA provides each locality with estimated amounts to be reserved for each locality for the upcoming fiscal year, as well as an estimated schedule for future payments.
2. Locality develops plan(s) for the use of their reserved funds and submits to OAA.
  - ✓ Technical assistance (toolkit) available to localities from the OAA, state agencies, statewide associations, non-profits, and other subject matter experts.
3. After confirming the uses are appropriate, OAA transfers available funds to the locality
4. Locality reports results and outcomes at least annually back to OAA.



# OAA Distributions to Regional Partnerships

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1. Process is under development
2. May include process whereby the OAA Board issues RFPs for regional projects to be undertaken by participating subdivisions
3. Participating subdivisions may also submit unsolicited proposals for regional projects
4. In either event the participating regional subdivisions will need to execute an agreement endorsed by the governing bodies of participating subdivisions prior to submission to the OAA. Must identify a single fiscal agent.
5. The fiscal agent locality must collect and report data describing the results and outcomes at least annually back to OAA.

# OAA Annual Distributions to State Agencies

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1. Process is under development
2. May include process whereby the OAA Board identifies specific needs and requests proposals from state agencies to address those needs
3. Agencies may also submit unsolicited proposals
4. The agency must collect and report data describing the results and outcomes at least annually back to OAA.

# OAA Unrestricted Fund

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Provides the OAA Board additional flexibility in awarding additional funding in grants and distributions to localities, regional partnerships, and state agencies.



# Coordination

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- OAA funding and involvement provides an opportunity to ensure coordination between state agencies, local governments, CSBs, and non-governmental organizations in the delivery of opioid abatement and remediation efforts.
- Funding will reflect a statewide vision with local stakeholders driving implementation.
- Coordination with other sources of funding (ie, Federal funds and other grants) to avoid duplication of efforts.

# 12 Month Plan for the OAA

- **Stand up the office / Establish Business Cycle for Distributing Funds**
  - ✓ On-board key staff
  - ✓ Lease space, buy computers, etc.
  - ✓ Establish online portal for grant cycle management
  - ✓ Present the board a financial strategy with multi-year projections
  - ✓ Aim to roll out first major allotment of awards to participating localities and state agencies in July 2023
- **Communications and Outreach Effort**
  - ✓ Attend meetings of VML, VACO, ASAM, Sheriff's Association, CSB Association, others
  - ✓ Conduct webinars
  - ✓ Consider OAA hosting a conference highlighting opioid abatement resources
  - ✓ Connect with other States' opioid abatement offices
- **Begin Building out the Support Toolkit**
  - ✓ In concert with State Agencies, CSBs, Local Governments, Private Service Providers, Recovery Organizations, Peers